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**HOUSE BILL 527**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Ni ck L. Salazar**

**AN ACT**

**RELATING TO TAXATION; ENACTING THE ADVANCED ENERGY PRODUCT  
MANUFACTURERS TAX CREDIT ACT.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the  
"Advanced Energy Product Manufacturers Tax Credit Act".**

**Section 2. DEFINITIONS.--As used in the Advanced Energy  
Product Manufacturers Tax Credit Act:**

**A. "advanced energy product" means an advanced  
energy vehicle, fuel cell system, renewable energy system or  
any component of an advanced energy vehicle, fuel cell system  
or renewable energy system;**

**B. "advanced energy vehicle" means a motor vehicle  
manufactured by an original equipment manufacturer that fully  
warrants and certifies that the motor vehicle meets the federal**

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1 motor vehicle safety standards and is designed to be propelled  
2 in whole or in part by electricity and includes a gasoline-  
3 electric hybrid motor vehicle exempt from the motor vehicle  
4 excise tax pursuant to Subsection F of Section 7-14-6 NMSA  
5 1978;

6 C. "component" means any part, assembly of parts,  
7 material, ingredient or supply that is incorporated directly  
8 into an end product;

9 D. "department" means the taxation and revenue  
10 department, the secretary of taxation and revenue or any  
11 employee of the department exercising authority lawfully  
12 delegated to that employee by the secretary;

13 E. "fuel cell system" means a system that converts  
14 hydrogen, natural gas or waste gas to electricity without  
15 combustion, including:

16 (1) a fuel cell or a system used to generate  
17 or reform hydrogen for use in a fuel cell; or

18 (2) a system used to generate or reform  
19 hydrogen for use in a fuel cell, including:

20 (a) electrolyzers that use renewable  
21 energy; and

22 (b) reformers that use natural gas as  
23 the feedstock;

24 F. "manufacturing" means combining or processing  
25 components or materials to increase their value for sale in the

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1 ordinary course of business, but does not include construction,  
2 farming, power generation or processing natural resources;

3 G. "manufacturing equipment" means an essential  
4 machine, mechanism or tool or a component of an essential  
5 machine, mechanism or tool used directly and exclusively in a  
6 taxpayer's manufacturing operation and that is subject to  
7 depreciation pursuant to the Internal Revenue Code of 1986 by  
8 the taxpayer carrying on the manufacturing; provided that  
9 "manufacturing equipment" does not include a vehicle that  
10 leaves the site of a manufacturing operation for the purpose of  
11 transporting persons or property, including property for which  
12 the taxpayer claims a credit pursuant to Section 7-9-79 NMSA  
13 1978;

14 H. "manufacturing operation" means a plant  
15 employing personnel to perform production tasks, in conjunction  
16 with manufacturing equipment not previously existing at the  
17 site, to produce goods;

18 I. "modified combined tax liability" means the  
19 total liability for the reporting period for the gross receipts  
20 tax imposed by Section 7-9-4 NMSA 1978 together with any tax  
21 collected at the same time and in the same manner as that gross  
22 receipts tax, such as the compensating tax, the withholding  
23 tax, the interstate telecommunications gross receipts tax, the  
24 surcharges imposed by Section 63-9D-5 NMSA 1978 and the  
25 surcharge imposed by Section 63-9F-11 NMSA 1978, minus the

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1 amount of any credit other than the advanced energy products  
2 manufacturers tax credit applied against any or all of those  
3 taxes or surcharges; provided that "modified combined tax  
4 liability" excludes all amounts collected with respect to local  
5 option gross receipts taxes;

6 J. "pass-through entity" means any business  
7 association other than:

8 (1) a sole proprietorship;

9 (2) an estate or trust;

10 (3) a corporation, limited liability company,  
11 partnership or other entity that is not a sole proprietorship  
12 taxed as a corporation for federal income tax purposes for the  
13 taxable year; or

14 (4) a partnership that is organized as an  
15 investment partnership in which the partner's income is derived  
16 solely for interest, dividends and sales of securities;

17 K. "qualified expenditure" means any expenditure  
18 made after July 1, 2005 by a qualifying taxpayer for the  
19 purchase of manufacturing equipment;

20 L. "renewable energy" means a resource that  
21 generates electrical energy through low- or zero-emissions  
22 generation technology that has substantial long-term production  
23 potential and that uses as an energy source only solar heat,  
24 solar light, wind, geothermal energy, landfill gas or biomass  
25 either singly or in combination;

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1 M "renewable energy system" means a system using  
2 renewable energy to produce hydrogen or to generate  
3 electricity, including related cogeneration systems that create  
4 mechanical energy or that produce heat or steam for space or  
5 water heating and agricultural or small industrial processes  
6 and includes a:

- 7 (a) photovoltaic energy system;
- 8 (b) solar-thermal energy system;
- 9 (c) biomass energy system;
- 10 (d) wind energy system;
- 11 (e) hydrogen production system; or
- 12 (f) battery cell energy system; and

13 N. "taxpayer" means a person, including a  
14 shareholder, member, partner or other owner of a pass-through  
15 entity, who is liable for payment of any tax or to whom an  
16 assessment has been made, if the assessment remains unabated or  
17 the amount thereof has not been paid.

18 Section 3. ADMINISTRATION. --The department shall  
19 administer the Advanced Energy Product Manufacturers Tax Credit  
20 Act pursuant to the Tax Administration Act.

21 Section 4. ADVANCED ENERGY PRODUCT MANUFACTURERS TAX  
22 CREDIT. --

23 A. A tax credit to be known as the "advanced energy  
24 product manufacturers tax credit" may be claimed by a taxpayer  
25 in an amount:

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1 (1) for which the taxpayer has been granted  
2 approval by the department pursuant to the Advanced Energy  
3 Product Manufacturers Tax Credit Act; and

4 (2) not to exceed five percent of the  
5 taxpayer's qualified expenditures.

6 B. The advanced energy product manufacturers tax  
7 credit may only be deducted from the taxpayer's modified  
8 combined tax liability. Any portion of the advanced energy  
9 product manufacturers tax credit that remains unused at the end  
10 of the taxpayer's reporting period may be carried forward for  
11 three years.

12 Section 5. ELIGIBILITY REQUIREMENTS--EMPLOYMENT.--

13 A. To be eligible to claim a credit pursuant to the  
14 Advanced Energy Product Manufacturers Tax Credit Act, the  
15 taxpayer shall employ:

16 (1) a full-time employee not included in the  
17 number of full-time employees whom the taxpayer claimed to  
18 employ for the purpose of claiming an advanced energy product  
19 manufacturers tax credit for a previous tax year; provided that  
20 the taxpayer claimed the credit during a previous year; and

21 (2) except as otherwise provided in this  
22 section, a number of full-time employees equal to one full-time  
23 employee employed one year prior to the day on which the  
24 taxpayer applies for the credit for each:

25 (a) five hundred thousand dollars

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1 (\$500,000), or a portion of that amount, of qualified  
2 expenditures claimed by the taxpayer in a taxable year in the  
3 same claim, up to a value of thirty million dollars  
4 (\$30,000,000); and

5 (b) one million dollars (\$1,000,000), or  
6 a portion of that amount, in value of qualified expenditures  
7 over thirty million dollars (\$30,000,000) claimed by the  
8 taxpayer in a taxable year in the same claim.

9 B. In lieu of a full-time employee that the  
10 taxpayer is required to employ to claim an advanced energy  
11 product manufacturers tax credit pursuant to Paragraph (2) of  
12 Subsection A of this section, a taxpayer may employ a full-time  
13 employee employed earlier than one year prior to the day on  
14 which the taxpayer applies for the credit if:

15 (1) the employee is trained by the employer  
16 earlier than one year prior to the day on which the taxpayer  
17 applies for the credit; or

18 (2) the employee is hired with respect to use  
19 of qualified equipment.

20 Section 6. APPROVAL OF CREDIT--ISSUANCE AND DENIAL--  
21 APPLICATION--DEADLINES.--

22 A. The department shall issue or deny approval for  
23 an advanced energy product manufacturers tax credit in response  
24 to a taxpayer's application for approval for the credit. The  
25 department shall issue approval for a credit claimed by a

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1 taxpayer who satisfies the requirements of the Advanced Energy  
2 Product Manufacturers Tax Credit Act.

3 B. The department may require a taxpayer who claims  
4 an advanced energy product manufacturers tax credit to produce  
5 evidence of the taxpayer's compliance with the Advanced Energy  
6 Product Manufacturers Tax Credit Act.

7 C. A taxpayer may apply for approval of an advanced  
8 energy product manufacturers tax credit on or before the last  
9 day of the year following the end of the calendar year in which  
10 the qualified expenditure is made. The department may not  
11 issue approval for the advanced energy product manufacturers  
12 tax credit if the taxpayer applies for approval after the last  
13 day of the year following the end of the calendar year in which  
14 the qualified expenditure is made.

15 Section 7. RECAPTURE. --If the taxpayer or a successor in  
16 the business of the taxpayer ceases operations at a facility in  
17 New Mexico for at least one hundred eighty consecutive days  
18 within a two-year period after the taxpayer has claimed an  
19 advanced energy products manufacturers tax credit, the  
20 department shall not grant additional advanced energy product  
21 manufacturers tax credits with respect to that facility. Any  
22 amount of the approved credit with respect to that facility  
23 that is not claimed against the taxpayer's modified combined  
24 tax liability shall be extinguished, and within thirty days  
25 after the one hundred eightieth day of cessation of operations,

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1 the taxpayer shall pay the modified income tax liability  
2 against which an approved credit was taken. For the purposes  
3 of this section, a taxpayer shall not be deemed to have ceased  
4 operations during reasonable periods for maintenance or  
5 retooling or for the repair or replacement of facilities  
6 damaged or destroyed during the continuance of labor disputes.

7 Section 8. CREDIT CLAIM FORMS. --The department shall  
8 provide credit claim forms and instructions. A credit claim  
9 form shall accompany any return in which the taxpayer claims a  
10 credit, and the claim shall specify the amount of credit  
11 intended to apply to each return.

12 Section 9. EFFECTIVE DATE. --The effective date of the  
13 provisions of this act is July 1, 2005.